

FILE COPY

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

KNICKERBOCKER HOTEL PHARMACY  
BENJAMIN F. SAVAGLIO, R.PH.,  
RESPONDENTS.

FINAL DECISION AND ORDER  
LS9004271PHM

The parties to this proceeding for purposes of sec. 227.53, Wis. Stats.,  
are:

Knickerbocker Hotel Pharmacy  
1028 East Juneau Avenue  
Milwaukee, WI 53202

Benjamin F. Savaglio, R.Ph.  
3228 South Logan Avenue  
Milwaukee, WI 53207

Wisconsin Pharmacy Examining Board  
P.O. Box 8935  
Madison, WI 53708

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708

The rights of a party aggrieved by this decision to petition the board for  
rehearing and to petition for judicial review are set forth in the attached  
"Notice of Appeal Information".

A Notice of Hearing and Complaint were issued in this matter on April 27,  
1990. The respondents, Mr. Savaglio in his own right and as owner and agent  
of Knickerbocker Hotel Pharmacy, did not file an answer to the complaint but  
instead entered into a stipulation neither admitting nor denying the  
allegations of the complaint and consenting to the revocation of the pharmacy  
and pharmacist licenses previously issued to the respective respondents.

Both respondents were represented on the stipulation, and in this  
proceeding, by Attorney Steven R. Kohn, 1110 Old World 3rd Street, Milwaukee,  
Wisconsin 53203. The complainant was represented by Attorney Robert T. Ganch,  
Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708. The  
stipulation reserved the issue of whether a forfeiture should be imposed in  
addition to the revocation, and if so, in what amount, for decision by the

administrative law judge and, ultimately, the Pharmacy Examining Board. The stipulation also provided that the board would consider a motion for costs subsequent to its determination upon the proposed decision filed by the administrative law judge.

Written arguments were provided by the respective parties to the administrative law judge, with the final argument being received January 14, 1991. The administrative law judge issued his proposed decision on April 18, 1991.

Respondents' attorney filed objections to the proposed decision, dated April 22, 1991. Thereafter, complainant's attorney requested oral argument be had before the board and filed written objections on May 3, 1991. The attorneys also submitted an agreement, signed on May 1, 1991 by Mr. Kohn and on May 2, 1991 by Mr. Ganch, that certain documents filed with the written arguments to the administrative law judge be deemed admitted and considered a part of the evidentiary record in this case. By correspondence dated May 2, 1991, Mr. Kohn indicated that he objected to having oral argument before the board, believed they would be fruitless, and indicated that he would not appear. Oral argument was held before the board on May 14, 1991, at which time Mr. Ganch appeared on behalf of complainant, but neither respondent nor Mr. Kohn appeared.

Based upon the entire record in this case, the Pharmacy Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

#### FINDINGS OF FACT

1. Benjamin F. Savaglio, R.Ph., Respondent, of 3229 South Logan Avenue, Milwaukee, Wisconsin, 53207, was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, license #7287, first issued on September 16, 1963.

2. Knickerbocker Hotel Pharmacy, Respondent, whose last address of record is 1028 East Juneau Avenue, Milwaukee, Wisconsin, 53202, is and was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to operate as a licensed pharmacy in the State of Wisconsin, license #6579, first granted on September 4, 1984.

3. Benjamin F. Savaglio, R.Ph. is and was at all times relevant to this matter 100% owner and managing pharmacist of Knickerbocker Hotel Pharmacy. Benjamin F. Savaglio, R.Ph. represents that Knickerbocker Hotel Pharmacy has ceased doing business as a licensed pharmacy in the State of Wisconsin.

4. This disciplinary proceeding was commenced by the issuance of a Notice of Hearing and Complaint and service thereof on Respondents on April 27, 1990.

5. Neither Respondent nor the attorney for the Respondent has filed an Answer to the Complaint, and each Respondent chooses not to contest the allegations of the Complaint.

6. Secs. 161.23 and 161.38, Wis. Stats., and Title 21, Code of Federal Regulations 1306.32 permit dispensing without a prescription, upon certain conditions and restrictions, certain cough medications containing codeine that are Schedule V controlled substances.

7. Sec. 161.23 and 161.38, Wis. Stats., and Title 21, Code of Federal Regulations sec. 1306.32, among other procedural and record keeping requirements, restrict the nonprescription sale of Schedule V codeine based cough medications to not more than 4 ounces to any individual in any 48 hour period, that such medications be dispensed and sold in good faith as a medicine, and not for the purpose of evading the Wisconsin Uniform Controlled Substances Act, Ch. 161, Wis. Stats.

8. Sec. 161.23(4), Wis. Stats., and 21 Code of Federal Regulations sec. 1306.32(e) require as a condition of dispensing a Schedule V controlled substance without a prescription, among other things, that the pharmacist dispensing the substance shall record in a bound record book the name and address of the purchaser, the name and quantity of the product sold, and that the purchaser and pharmacist shall sign the record of the transaction.

9. From September 4, 1984 through December 21, 1988, Knickerbocker Hotel Pharmacy purchased from distributors and dispensed to customers without a prescription certain liquid cough medications containing codeine, under the generic or brand names of: Robitussin AC, Terpin Hydrate with Codeine, Cheracol, Tussar 2, Ambenyl, Guiatuss, Tussi Organidin Liquid, Iophen-C Liquid, APAP with Codeine, Promethazine with Codeine Syrup, Pentuss, Nucofed Pediatric Expectorant Syrup, and Bromphen DC Cough Syrup with Codeine (all hereinafter referred to collectively as "codeine based cough syrups").

10. The codeine based cough syrups listed in paragraph #9 are Schedule V controlled substances pursuant to sec. 161.22(2), Wis. Stats., and Title 21, Code of Federal Regulations 1308.15(c), and have potential for abuse and physical and psychological dependence liability.

11. On each of November 3, 4, and 5, 1986, Knickerbocker Hotel Pharmacy sold to an undercover City of Milwaukee police officer a 4 ounce bottle of Upjohn brand Cheracol cough syrup at a price of \$7.95 which contains the narcotic controlled substance, codeine, and which cough syrup is classified as a Schedule V controlled substance under sec. 161.22, Wis. Stats.

12. The sales on November 3, 4, and 5, 1986, to the undercover City of Milwaukee police officer of Cheracol cough syrup alleged above were in violation of sec. 161.23(1), (3), and (5), Wis. Stats., and Title 21, Code of Federal Regulations sec. 1306.32(b) and (d), in the following respects:

a. Identification was not required of the purchaser on November 3, 1986,

b. The sales on November 4 and 5, 1986, occurred within 48 hours of the previous sale,

c. The immediate containers of the Cheracol cough syrup sold on November 3 and 4, 1986, did not contain the name and the address of the retail establishment of Knickerbocker Hotel Pharmacy from which the bottles were sold, and

d. No inquiry was made by the seller, nor information provided by the purchaser, of the cough syrups on November 3, 4, and 5, 1986, as to the nature of the condition or illness for which the cough syrup was being purchased.

13. On March 27, 1987, Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., were apprised by an officer of the Milwaukee Police Department of the violations on November 4 and 5, 1986, and issued an order directing Benjamin F. Savaglio to appear on April 7, 1987 at the Milwaukee Police Department, Vice Control Division regarding the violations.

14. During the period from January 1986 through November 1986, Knickerbocker Hotel Pharmacy purchased from DEA registered wholesale distributors of Schedule V codeine based cough syrups, a volume of Schedule V codeine based cough syrups averaging at least 51 gallons per month, which amounts to at least 1632 four ounce containers per month or 54 four ounce containers per day.

15. During the period from February 1987 through May 1987, Knickerbocker Hotel Pharmacy purchased from DEA registered wholesale distributors of Schedule V codeine based cough syrups, a volume of Schedule V codeine based cough syrups averaging at least 92 gallons per month, which amounts to at least 2,944 four ounce containers per month or 98 four ounce containers per day.

16. On August 4, 1987, investigators from the U.S. Drug Enforcement Administration, with the consent of Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, conducted an administrative inspection of Knickerbocker Hotel Pharmacy, obtained the Schedule V nonprescription controlled substances dispensing records for Knickerbocker Hotel Pharmacy for the period of approximately August 20, 1984 through August 4, 1987, and inventoried the Schedule V codeine based cough syrups on the premises, which inventory totaled 5.92 gallons.

17. The nonprescription Schedule V controlled substances dispensing records for Knickerbocker Hotel Pharmacy for the period of April 24, 1987 through July 15, 1987 were examined and revealed the following:

a. Knickerbocker Hotel Pharmacy made approximately 7,353 nonprescription sales of 4 ounce bottles of codeine based Schedule V controlled substances to individuals, averaging approximately 90 sales per day.

b. The nonprescription Schedule V controlled substances dispensing records for Knickerbocker Hotel Pharmacy were examined for purposes of detecting repeat sales to the same individual within 48 hours of 4 ounce bottles of codeine based Schedule V controlled substances. The examination of said records revealed at least 185 instances of repeat nonprescription sales to the same individual within 48 hours during the 82 day period of April 24 through July 15, 1987 of 4 ounce bottles of codeine based Schedule V controlled substances.

c. High numbers of repetitive sales to the same individuals over extended periods of time, ranging from once every three days to once every 6 to 10 days to certain individual purchasers.

d. Approximately 1400 instances, or 23% of the sales during the 82 day period from April 24 through July 15, 1987, of Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio having made an incomplete record of dispensing of Schedule V controlled substances by omitting from the record, or recording illegibly, one or more of the purchaser's name or address, quantity of substance dispensed, purchaser's signature or the signature or initials of the dispensing pharmacist.

18. During the period from September 1987 through April 1988, Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., purchased Schedule V codeine based cough syrups in amounts averaging at least approximately 62 gallons per month, and at times amounting to as much as 70 gallons per month, which amounts to at least 1,984 four ounce containers per month or 66 four ounce containers per day.

19. On December 21, 1988, pursuant to an Administrative Inspection Warrant, the Division of Enforcement conducted an inspection of Knickerbocker Hotel Pharmacy and obtained nonprescription Schedule V controlled substances dispensing records from Knickerbocker Hotel Pharmacy for the period of August 4, 1987 to December 21, 1988.

20. The nonprescription Schedule V controlled substance dispensing records for Knickerbocker Hotel Pharmacy for the period of May 21, 1988 through December 21, 1988 were examined and revealed the following:

a. Knickerbocker Hotel Pharmacy made 13,123 nonprescription sales of 4 ounce bottles of codeine based Schedule V controlled substances to individuals, averaging approximately 61 sales per day.

b. The nonprescription Schedule V controlled substances sales records for Knickerbocker Hotel Pharmacy were examined for purposes of detecting repeat nonprescription sales to the same individual within 48 hours of 4 ounce bottles of codeine based Schedule V controlled substances. The examination of said records revealed at least 107 instances of repeat nonprescription sales within 48 hours to the same individual during the 7 month period of May 21 through December 21, 1988, of codeine based Schedule V controlled substances.

c. Extreme numbers of repetitive sales to the same individuals over extended periods of time, in most cases averaging one sale every two or three days to certain individual purchasers.

21. Respondent Benjamin F. Savaglio, R.Ph., as part owner and managing pharmacist of Knickerbocker Hotel Pharmacy, was directly responsible for the vast majority of the illegal sales noted above in paragraphs 16 and 19.

22. At all times relevant to this matter, Knickerbocker Hotel Pharmacy was required to make and maintain on the premises of its registered location and available for inspection and copying by authorized persons, for a minimum period of five (5) years from the date of such records, an initial and biennial inventories of all controlled substances on hand as of its initial and biennial inventory dates, pursuant to 21 USC 821 et. seq. and 21 Code of Federal Regulations, 1304.03-1304.14 and 1304.17, sec. 161.31, Wis. Stats. and sec. Phar 8.02(2), Wis. Adm. Code.

23. Respondent Savaglio stated that the required biennial inventory had been conducted; however, his bookkeeper had the inventory record, which was not maintained at the pharmacy location, and failed to produce the biennial inventory.

24. On August 4, 1988, during the inspection by the Drug Enforcement Administration's investigators, Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., as owner and managing pharmacist thereof, failed to have present and produce for inspection and copying the last biennial inventory of Knickerbocker Hotel Pharmacy.

25. On December 21, 1988, Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, as owner and pharmacy manager thereof, failed to have completed, maintained on the premises and have available for inspection and copying pursuant to demand under an Administrative Inspection Warrant any biennial controlled substances inventory for the biennium ending September 4, 1988 in violation of sec. 21 CFR 1304.04(a) and (h), 1304.12 and 1304.13, and sec. Phar 8.02(2), Wis. Adm. Code.

26. Respondents' net income (defined as sale price minus cost to Respondents of each bottle sold) from the sale of Schedule V cough syrups was substantial, to wit: a minimum monthly net income of \$6528.00 for the months January through November 1986; a minimum monthly net income of \$11,776.00 for the months February through May 1987; a minimum net monthly income of \$7936.00 for the months September 1987 through April 1988.

27. The sale of Schedule V cough syrups by Respondents amounted to most of the pharmacy business of Knickerbocker Hotel Pharmacy.

28. Respondent Benjamin F. Savaglio was convicted on or about December 10, 1990 of violation of section 49.49(1)(a)1., Wis. Stats., for making false statements and representations of material fact with respect to applications for payment through the Wisconsin Medical Assistance Program, resulting in

overpayment to him in the amount of \$27,000.00. The facts underlying such conviction are unrelated to the facts concerning Schedule V cough syrup nonprescription sales and failure to make and keep controlled substances records which are the subject of this disciplinary proceeding.

29. Based upon the aforesaid conviction, among other things, Respondent Benjamin Savaglio was ordered to pay \$27,000.00 in restitution and an \$15,000.00 fine, and as a condition of probation, was ordered not to own, operate or be employed by or in a pharmacy for a period of five years.

#### CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction to take action in this matter pursuant to Chapter 450, Wis. Stats.

2. The Pharmacy Examining Board and the parties may resolve this matter, or parts thereof by Stipulation and without hearing pursuant to sec. 227.44(5), Wis. Stats.

3. The conduct of each of Respondent Knickerbocker Hotel Pharmacy, and Respondent Benjamin F. Savaglio, R.Ph., individually and as owner and managing pharmacist of Knickerbocker Hotel Pharmacy, violated sec. 161.23, Wis. Stats., in the following respects:

a. Violated sec. 161.23(1), Wis. Stats., in that, as a pattern of practice, codeine based Schedule V controlled substances were dispensed without prescription not in good faith as in medicine, and for the purpose of evading Ch. 161, Wis. Stats.

b. Violated sec. 161.23(5), Wis. Stats., in that in at least 292 instances, more than 4 ounces of codeine based Schedule V controlled substances were dispensed, without a prescription, to the same individual within 48 hours.

c. Violated sec. 161.23(4), Wis. Stats., in that in numerous instances, a complete record of the dispensing of Schedule V controlled substances was not made by having omitted or having illegibly recorded the purchaser's name or address, name or quantity of the substance dispensed, purchaser's signature, or signature or initials of the dispensing pharmacist.

4. The conduct of each of Respondent Knickerbocker Hotel Pharmacy, and Respondent Benjamin F. Savaglio, R.Ph., individually and as owner and pharmacy manager of Knickerbocker Hotel Pharmacy, violated Title 21, Code of Federal Regulations, sec. 1306.32(b), in that each Respondent in numerous instances dispensed without a prescription more than 4 ounces of codeine based Schedule V controlled substances to the same individual within a 48 hour period.

5. Sec. 161.23, Wis. Stats., and Title 21, Code of Federal Regulations, sec. 1306.32, regulating the dispensing of Schedule V controlled substances without a prescription, are laws substantially related to the practice of pharmacy.

6. Violating, or aiding or abetting the violation of, any law substantially related to the practice of pharmacy constitutes unprofessional conduct under sec. Phar. 10.03(1), Wis. Adm. Code, and sec. 450.10(1)(a)2., Wis. Stats.

7. Each of Respondent Knickerbocker Hotel Pharmacy, and Respondent Benjamin F. Savaglio, R.Ph., individually and as owner and managing pharmacist of Knickerbocker Hotel Pharmacy, as alleged above, dispensed or supplied Schedule V controlled substances other than in legitimate practice and as prohibited by law, which conduct constitutes unprofessional conduct under sec. Phar 10.03(3), Wis. Adm. Code, and sec. 450.10(1)(b)1., Wis. Stats.

8. Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., as owner and managing pharmacist of Knickerbocker Hotel Pharmacy, violated sec. 21 CFR 1304.04(a) and (h), 1304.12 and 1304.13, and sec. Phar 8.02(2), Wis. Adm. Code by having failed to maintain on the premises of Knickerbocker Hotel Pharmacy and available for inspection the biennial controlled substances inventory for Knickerbocker Hotel Pharmacy for the biennium ending August 4, 1986.

9. Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., as owner and pharmacy manager of Knickerbocker Hotel Pharmacy, violated sec. 21 CFR 1304.04(a) and (h), 1304.12 and 1304.13, and sec. Phar 8.02(2), Wis. Adm. Code, in that each of Knickerbocker and Benjamin F. Savaglio failed to have completed, maintained on the premises and have available for inspection and biennial controlled substances inventory for Knickerbocker Hotel Pharmacy for the biennium ending September 4, 1988.

10. Section 450.10(1)(b) authorizes the Pharmacy Examining Board to reprimand the licensee or revoke, suspend or limit the license or any combination thereof of any person licensed under Chapter 450 who has engaged in unprofessional conduct.

11. The Pharmacy Examining Board is authorized under sec. 450.10(2), Wis. Stats., to assess a forfeiture in addition to or in lieu of reprimand, limitation, suspension or revocation of license.

#### ORDER

1. The Stipulation of the parties is hereby accepted.

2. Effective immediately, the license to operate as a pharmacy in the State of Wisconsin issued to Knickerbocker Hotel Pharmacy, doing business at 1028 East Juneau Avenue, Milwaukee, Wisconsin, license #6579, shall be and hereby is revoked. Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, as



owner and managing pharmacist thereof shall immediately forward to the Pharmacy Examining Board all indicia of licensure heretofore issued to Knickerbocker Hotel Pharmacy to operate as a pharmacy in the State of Wisconsin.

3. Effective immediately, the license to practice pharmacy issued to Benjamin F. Savaglio, date of birth December 15, 1930, of 3228 South Logan Avenue, Milwaukee, Wisconsin, license #7287, shall be and hereby is revoked. Benjamin F. Savaglio shall immediately forward to the Pharmacy Examining Board all indicia of licensure heretofore issued to him to practice pharmacy in the State of Wisconsin.

4. Benjamin F. Savaglio is further hereby assessed and ordered to pay a forfeiture of \$30,000.00.

5. Based upon the Stipulation of the parties, the board, upon motion, shall consider the assessment of costs under sec. 440.22, Wis. Stats.

#### EXPLANATION OF VARIANCE

The central issue before the board is whether or not a forfeiture should be imposed against respondent Benjamin F. Savaglio.

It was the opinion of the administrative law judge that a forfeiture should not be imposed under the circumstances of this case; but that payment of the costs of the proceeding clearly should be incumbent upon respondent due to his egregious conduct. Complainant's attorney objected to the recommendation that a forfeiture not be ordered, and respondents' to the determination that costs be levied.

Complainant's basic argument, simply stated, is that the facts in this case establish that respondent Savaglio's actions were in total disregard of the law and resulted in substantial financial benefit. There is no question but that Savaglio's violations are numerous, flagrant and egregious. As capsule by complainant, they include:

1. Over 290 "48 hours violations" during a ten month total sampling period in 1986, 1987 and 1988, with a peak of 185 such violations in an 82 day period in 1987.

2. An extreme number of repetitive Schedule V codeine based cough syrup sales to the same individuals over extended periods of time, averaging one sale every two, three or up to six or ten days to certain individuals.

3. 1400 instances of incomplete recordkeeping on the sales of Schedule V codeine based cough syrups during one 82 day period in 1987, constituting 23% of such sales.

4. Failure to maintain the 1986 biennial controlled substances inventory on the pharmacy premises for inspection, and the failure to conduct the required inventory for 1988.

Apart from the above-stated violations, the amount of Schedule V dispensing from the pharmacy was staggering, averaging 51 gallons per month over an eleven month period in 1986, 92 gallons per month over four months in 1987, and 62 gallons per month in an eight month period during 1987-88.

The economic benefit accruing to Savaglio through his misconduct was substantial. Findings of Fact have been added by the board to express the amounts involved, as requested by complainant's attorney. As Savaglio testified in his deposition, the sale of Schedule V cough syrups was the major part of his pharmacy business. His minimum profit margin on each sale amounted to four dollars. Accordingly, his profits may be conservatively calculated as follows:

1. In January through November 1986, \$6528, or \$78,336 annualized.
2. In February through May 1987, \$11,776, or \$141,312 annualized.
3. In September 1987 through April 1988, \$7936, or \$95,232 annualized.

There can be little question but that Savaglio's misconduct was extremely severe, harmful to the health and safety of the individuals he knew to be repetitively obtaining excessive amounts of controlled substances, and of substantial economic benefit to himself and his pharmacy. Furthermore, the consistent failure to keep complete records of Schedule V transactions, as well as the failure to even conduct the controlled substances inventory for 1988, speaks further of Savaglio's disregard for the laws enacted to protect the public.

It may be correct to say that the imposition of a forfeiture will not serve further to deter Savaglio, himself, from engaging in future unprofessional conduct should he ever become licensed as a pharmacist in this state again. However, it is the board's opinion that a substantial forfeiture is necessary in this case in order to deter other licensees from engaging in similar misconduct and in order to clearly state that licensees will not be permitted to retain the economic benefits derived from illegal conduct. Deterrence of other licensees, and therefore the protection of the public, require the imposition of a forfeiture in this case. See, State v. Aldrich, 71 Wis. 2d 206, 209 (1976).

The complainant requests that Savaglio be assessed a forfeiture in the amount of \$30,000. He suggests that the forfeiture should be categorized as being comprised of \$18,000 for the "48 hour" violations, \$5,000 for failing to maintain the 1986 biennial controlled substances inventory on the premises and failing to conduct the 1988 inventory, \$5,000 for the repetitive sales of Schedule V substances to the same individuals, and \$2,000 for the incomplete Schedule V record keeping.

The board believes that such amount, and categorization, is clearly reasonable given the number, type and severity of the violations, the culpability of Savaglio, and the economic benefit which accrued to the respondents from the illegal conduct. See, State v. Schmitt, 145 Wis.2d 724 (Ct.App. 1988). It is also proportionate to the forfeiture imposed by this board for the misconduct found in a previous disciplinary proceeding, In the Matter of Silver Spring Pharmacy, et al., decided September 12, 1989. The fact that Savaglio has substantial monetary obligations accruing from an unrelated criminal action--see, added Findings of Fact #28 and #29--does not present mitigating circumstances sufficient to detract from the necessity of imposing an appropriate forfeiture upon the basis of the violations found in this proceeding.

Finally, the board has not ordered that costs be imposed upon respondents at this time. Pursuant to the stipulation entered into between the parties, such determination will be made upon future motion to the board.

Dated: May 28, 1991.

STATE OF WISCONSIN  
PHARMACY EXAMINING BOARD

Dan Reynolds, R.Ph.  
Dan Reynolds, R.Ph.  
Chairman DRR

BDLS2-375

## **NOTICE OF APPEAL INFORMATION**

**(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each, and the identification  
of the party to be named as respondent)**

**The following notice is served on you as part of the final decision:**

### **1. Rehearing.**

**Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.**

**A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.**

### **2. Judicial Review.**

**Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board**

**within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.**

**The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.**

**The date of mailing of this decision is May 29, 1991.**

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

BEFORE THE STATE OF WISCONSIN  
PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

KNICKERBOCKER HOTEL PHARMACY  
BENJAMIN F. SAVAGLIO, R.P.H.,  
RESPONDENTS.

NOTICE OF FILING  
PROPOSED DECISION  
LS9004271PHM

TO: Steven Kohn, Atty.  
1110 Old World 3rd Street  
Milwaukee, WI 53203  
Certified P 568 984 556

Robert T. Ganch  
Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708

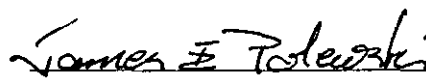
PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Pharmacy Examining Board by the Administrative Law Judge, James E. Polewski. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Pharmacy Examining Board, Room 176, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before May 3, 1991. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Pharmacy Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together, with any objections and arguments filed, the Pharmacy Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 19<sup>th</sup> day of April, 1991.

  
James E. Polewski  
Administrative Law Judge

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
KNICKERBOCKER HOTEL PHARMACY	:	LS 9004271 PHM
BENJAMIN F. SAVAGLIO, R.PH.,	:	
RESPONDENTS.	:	

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The parties to this proceeding for purposes of s. 227.53, Stats., are:

Knickerbocker Hotel Pharmacy  
1028 East Juneau Avenue  
Milwaukee, WI 53202

Benjamin F. Savaglio, R.Ph.  
3228 South Logan Avenue  
Milwaukee, WI 53207

Wisconsin Pharmacy Examining Board  
P.O. Box 8935  
Madison, WI 53708

Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708

A Notice of Hearing and Complaint were issued in this matter on April 27, 1990. The respondents, Mr. Savaglio in his own right and as owner and agent of Knickerbocker Hotel Pharmacy, did not file an answer to the complaint but instead entered into a stipulation neither admitting nor denying the allegations of the complaint and consenting to the revocation of the pharmacy and pharmacist licenses previously issued to the respective respondents. Both respondents were represented on the stipulation by Attorney Steven Kohn, 1110 Old World 3rd Street, Milwaukee, Wisconsin 53203. The stipulation reserved the issues of whether forfeiture or costs should be imposed in addition to the revocation, and, if so, in what amount for decision by the Administrative Law Judge and the Board. Written arguments were had on the issues, with the final argument received January 14, 1991. Respondents were represented by Attorney Kohn, and the Division of Enforcement was represented by Attorney Robert T. Ganch.

Based on the stipulation of the parties, the arguments received, and the entire record in this matter, the Administrative Law Judge recommends that the Pharmacy Examining Board adopt the following Findings of Fact, Conclusions of Law, and Order as its Final Decision in this matter.

### FINDINGS OF FACT

1. Benjamin F. Savaglio, R.Ph., Respondent, of 3229 South Logan Avenue, Milwaukee, Wisconsin, 53207, was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin, license #7287, first issued on September 16, 1963.

2. Knickerbocker Hotel Pharmacy, Respondent, whose last address of record is 1028 East Juneau Avenue, Milwaukee, Wisconsin, 53202, is and was at all times relevant to this matter duly licensed under the provisions of Chapter 450, Wis. Stats., to operate as a licensed pharmacy in the State of Wisconsin, license #6579, first granted on September 4, 1984.

3. Benjamin F. Savaglio, R.Ph. is and was at all times relevant to this matter 100% owner and managing pharmacist of Knickerbocker Hotel Pharmacy. Benjamin F. Savaglio, R.Ph. represents that Knickerbocker Hotel Pharmacy has ceased doing business as a licensed pharmacy in the State of Wisconsin.

4. This disciplinary proceeding was commenced by the issuance of a Notice of Hearing and Complaint and service thereof on Respondents on April 27, 1990.

5. Neither Respondent nor the attorney for the Respondent has filed an Answer to the Complaint, and each Respondent chooses not to contest the allegations of the Complaint.

6. Secs. 161.23 and 161.38, Wis. Stats., and Title 21, Code of Federal Regulations 1306.32 permit dispensing without a prescription, upon certain conditions and restrictions, certain cough medications containing codeine that are Schedule V controlled substances.

7. Sec. 161.23 and 161.38, Wis. Stats., and Title 21, Code of Federal Regulations sec. 1306.32, among other procedural and record keeping requirements, restrict the nonprescription sale of Schedule V codeine based cough medications to not more than 4 ounces to any individual in any 48 hour period, that such medications be dispensed and sold in good faith as a medicine, and not for the purpose of evading the Wisconsin Uniform Controlled Substances Act, Ch. 161, Wis. Stats.

8. Sec. 161.23(4), Wis. Stats., and 21 Code of Federal Regulations sec. 1306.32(e) require as a condition of dispensing a Schedule V controlled substance without a prescription, among other things, that the pharmacist dispensing the substance shall record in a bound record book the name and address of the purchaser, the name and quantity of the product sold, and that the purchaser and pharmacist shall sign the record of the transaction.



9. From September 4, 1984 through December 21, 1988, Knickerbocker Hotel Pharmacy purchased from distributors and dispensed to customers without a prescription certain liquid cough medications containing codeine, under the generic or brand names of: Robitussin AC, Terpin Hydrate with Codeine, Cheracol, Tussar 2, Ambenyl, Guiatuss, Tussi Organidin Liquid, Iophen-C Liquid, APAP with Codeine, Promethizine with Codeine Syrup, Pentuss, Nucofed Pediatric Expectorant Syrup, and Bromphen DC Cough Syrup with Codeine (all hereinafter referred to collectively as "codeine based cough syrups").

10. The codeine based cough syrups listed in paragraph #9 are Schedule V controlled substances pursuant to sec. 161.22(2), Wis. Stats., and Title 21, Code of Federal Regulations 1308.15(c), and have potential for abuse and physical and psychological dependence liability.

11. On each of November 3, 4, and 5, 1986, Knickerbocker Hotel Pharmacy sold to an undercover City of Milwaukee police officer a 4 ounce bottle of Upjohn brand Cheracol cough syrup at a price of \$7.95 which contains the narcotic controlled substance, codeine, and which cough syrup is classified as a Schedule V controlled substance under sec. 161.22, Wis. Stats.

12. The sales on November 3, 4, and 5, 1986, to the undercover City of Milwaukee police officer of Cheracol cough syrup alleged above were in violation of sec. 161.23(1), (3), and (5), Wis. Stats., and Title 21, Code of Federal Regulations sec. 1306.32(b) and (d), in the following respects:

a. Identification was not required of the purchaser on November 3, 1986,

b. The sales on November 4 and 5, 1986, occurred within 48 hours of the previous sale,

c. The immediate containers of the Cheracol cough syrup sold on November 3 and 4, 1986, did not contain the name and the address of the retail establishment of Knickerbocker Hotel Pharmacy from which the bottles were sold, and

d. No inquiry was made by the seller, nor information provided by the purchaser, of the cough syrups on November 3, 4, and 5, 1986, as to the nature of the condition or illness for which the cough syrup was being purchased.

13. On March 27, 1987, Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., were apprised by an officer of the Milwaukee Police Department of the violations on November 4 and 5, 1986, and issued an order directing Benjamin F. Savaglio to appear on April 7, 1987 at the Milwaukee Police Department, Vice Control Division regarding the violations.

14. During the period from January 1986 through November 1986, Knickerbocker Hotel Pharmacy purchased from DEA registered wholesale distributors of Schedule V codeine based cough syrups, a volume of Schedule V codeine based cough syrups averaging at least 51 gallons per month, which amounts to at least 1632 four ounce containers per month or 54 four ounce containers per day.

15. During the period from February 1987 through May 1987, Knickerbocker Hotel Pharmacy purchased from DEA registered wholesale distributors of Schedule V codeine based cough syrups, a volume of Schedule V codeine based cough syrups averaging at least 92 gallons per month, which amounts to at least 2,944 four ounce containers per month or 98 four ounce containers per day.

16. On August 4, 1987, investigators from the U.S. Drug Enforcement Administration, with the consent of Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, conducted an administrative inspection of Knickerbocker Hotel Pharmacy, obtained the Schedule V nonprescription controlled substances dispensing records for Knickerbocker Hotel Pharmacy for the period of approximately August 20, 1984 through August 4, 1987, and inventoried the Schedule V codeine based cough syrups on the premises, which inventory totaled 5.92 gallons.

17. The nonprescription Schedule V controlled substances dispensing records for Knickerbocker Hotel Pharmacy for the period of April 24, 1987 through July 15, 1987 were examined and revealed the following:

a. Knickerbocker Hotel Pharmacy made approximately 7,353 nonprescription sales of 4 ounce bottles of codeine based Schedule V controlled substances to individuals, averaging approximately 90 sales per day.

b. The nonprescription Schedule V controlled substances dispensing records for Knickerbocker Hotel Pharmacy were examined for purposes of detecting repeat sales to the same individual within 48 hours of 4 ounce bottles of codeine based Schedule V controlled substances. The examination of said records revealed at least 185 instances of repeat nonprescription sales to the same individual within 48 hours during the 82 day period of April 24 through July 15, 1987 of 4 ounce bottles of codeine based Schedule V controlled substances.

c. High numbers of repetitive sales to the same individuals over extended periods of time, ranging from once every three days to once every 6 to 10 days to certain individual purchasers.

d. Approximately 1400 instances, or 23% of the sales during the 82 day period from April 24 through July 15, 1987, of Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio having made an incomplete record of

dispensing of Schedule V controlled substances by omitting from the record, or recording illegibly, one or more of the purchaser's name or address, quantity of substance dispensed, purchaser's signature or the signature or initials of the dispensing pharmacist.

18. During the period from September 1987 through April 1988, Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., purchased Schedule V codeine based cough syrups in amounts averaging at least approximately 62 gallons per month, and at times amounting to as much as 70 gallons per month, which amounts to at least 1,984 four ounce containers per month or 66 four ounce containers per day.

19. On December 21, 1988, pursuant to an Administrative Inspection Warrant, the Division of Enforcement conducted an inspection of Knickerbocker Hotel Pharmacy and obtained nonprescription Schedule V controlled substances dispensing records from Knickerbocker Hotel Pharmacy for the period of August 4, 1987 to December 21, 1988.

20. The nonprescription Schedule V controlled substance dispensing records for Knickerbocker Hotel Pharmacy for the period of May 21, 1988 through December 21, 1988 were examined and revealed the following:

a. Knickerbocker Hotel Pharmacy made 13,123 nonprescription sales of 4 ounce bottles of codeine based Schedule V controlled substances to individuals, averaging approximately 61 sales per day.

b. The nonprescription Schedule V controlled substances sales records for Knickerbocker Hotel Pharmacy were examined for purposes of detecting repeat nonprescription sales to the same individual within 48 hours of 4 ounce bottles of codeine based Schedule V controlled substances. The examination of said records revealed at least 107 instances of repeat nonprescription sales within 48 hours to the same individual during the 7 month period of May 21 through December 21, 1988, of codeine based Schedule V controlled substances.

c. Extreme numbers of repetitive sales to the same individuals over extended periods of time, in most cases averaging one sale every two or three days to certain individual purchasers.

21. Respondent Benjamin F. Savaglio, R.Ph., as part owner and managing pharmacist of Knickerbocker Hotel Pharmacy, was directly responsible for the vast majority of the illegal sales noted above in paragraphs 16 and 19.

22. At all times relevant to this matter, Knickerbocker Hotel Pharmacy was required to make and maintain on the premises of its registered location and available for inspection and copying by authorized persons, for a minimum period of five (5) years from the date of such records, an initial and biennial inventories of all controlled substances on hand as of its initial

and biennial inventory dates, pursuant to 21 USC 821 et. seq. and 21 Code of Federal Regulations, 1304.03-1304.14 and 1304.17, sec. 161.31, Wis. Stats. and sec. Phar 8.02(2), Wis. Adm. Code.

23. Respondent Savaglio stated that the required biennial inventory had been conducted; however, his bookkeeper had the inventory record, which was not maintained at the pharmacy location, and failed to produce the biennial inventory.

24. On August 4, 1988, during the inspection by the Drug Enforcement Administration's investigators, Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., as owner and managing pharmacist thereof, failed to have present and produce for inspection and copying the last biennial inventory of Knickerbocker Hotel Pharmacy.

25. On December 21, 1988, Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, as owner and pharmacy manager thereof, failed to have completed, maintained on the premises and have available for inspection and copying pursuant to demand under an Administrative Inspection Warrant any biennial controlled substances inventory for the biennium ending September 4, 1988 in violation of sec. 21 CFR 1304.04(a) and (h), 1304.12 and 1304.13, and sec. Phar 8.02(2), Wis. Adm. Code.

#### CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction to take action in this matter pursuant to Chapter 450, Wis. Stats.

2. The Pharmacy Examining Board and the parties may resolve this matter, or parts thereof by Stipulation and without hearing pursuant to sec. 227.44(5), Wis. Stats.

3. The conduct of each of Respondent Knickerbocker Hotel Pharmacy, and Respondent Benjamin F. Savaglio, R.Ph., individually and as owner and managing pharmacist of Knickerbocker Hotel Pharmacy, violated sec. 161.23, Wis. Stats., in the following respects:

a. Violated sec. 161.23(1), Wis. Stats., in that, as a pattern of practice, codeine based Schedule V controlled substances were dispensed without prescription not in good faith as in medicine, and for the purpose of evading Ch. 161, Wis. Stats.

b. Violated sec. 161.23(5), Wis. Stats., in that in at least 292 instances, more than 4 ounces of codeine based Schedule V controlled substances were dispensed, without a prescription, to the same individual within 48 hours.

c. Violated sec. 161.23(4), Wis. Stats., in that in numerous instances, a complete record of the dispensing of Schedule V controlled

substances was not made by having omitted or having illegibly recorded the purchaser's name or address, name or quantity of the substance dispensed, purchaser's signature, or signature or initials of the dispensing pharmacist.

4. The conduct of each of Respondent Knickerbocker Hotel Pharmacy, and Respondent Benjamin F. Savaglio, R.Ph., individually and as owner and pharmacy manager of Knickerbocker Hotel Pharmacy, violated Title 21, Code of Federal Regulations, sec. 1306.32(b), in that each Respondent in numerous instances dispensed without a prescription more than 4 ounces of codeine based Schedule V controlled substances to the same individual within a 48 hour period.

5. Sec. 161.23, Wis. Stats., and Title 21, Code of Federal Regulations, sec. 1306.32, regulating the dispensing of Schedule V controlled substances without a prescription, are laws substantially related to the practice of pharmacy.

6. Violating, or aiding or abetting the violation of, any law substantially related to the practice of pharmacy constitutes unprofessional conduct under sec. Phar. 10.03(1), Wis. Adm. Code, and sec. 450.10(1)(a)2., Wis. Stats.

7. Each of Respondent Knickerbocker Hotel Pharmacy, and Respondent Benjamin F. Savaglio, R.Ph., individually and as owner and managing pharmacist of Knickerbocker Hotel Pharmacy, as alleged above, dispensed or supplied Schedule V controlled substances other than in legitimate practice and as prohibited by law, which conduct constitutes unprofessional conduct under sec. Phar 10.03(3), Wis. Adm. Code, and sec. 450.10(1)(b)1., Wis. Stats.

8. Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., as owner and managing pharmacist of Knickerbocker Hotel Pharmacy, violated sec. 21 CFR 1304.04(a) and (h), 1304.12 and 1304.13, and sec. Phar 8.02(2), Wis. Adm. Code by having failed to maintain on the premises of Knickerbocker Hotel Pharmacy and available for inspection the biennial controlled substances inventory for Knickerbocker Hotel Pharmacy for the biennium ending August 4, 1986.

9. Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, R.Ph., as owner and pharmacy manager of Knickerbocker Hotel Pharmacy, violated sec. 21 CFR 1304.04(a) and (h), 1304.12 and 1304.13, and sec. Phar 8.02(2), Wis. Adm. Code, in that each of Knickerbocker and Benjamin F. Savaglio failed to have completed, maintained on the premises and have available for inspection and biennial controlled substances inventory for Knickerbocker Hotel Pharmacy for the biennium ending September 4, 1988.

10. Section 450.10(1)(b) authorizes the Pharmacy Examining Board to reprimand the licensee or revoke, suspend or limit the license or any combination thereof of any person licensed under Chapter 450 who has engaged in unprofessional conduct.

11. The Pharmacy Examining Board is authorized under sec. 450.10(2), Wis. Stats. to assess a forfeiture in addition to or in lieu of reprimand, limitation, suspension or revocation of license.

#### ORDER

1. The Stipulation of the parties is hereby accepted.
2. Effective immediately, the license to operate as a pharmacy in the State of Wisconsin issued to Knickerbocker Hotel Pharmacy, doing business at 1028 East Juneau Avenue, Milwaukee, Wisconsin, license #6579, shall be and hereby is revoked. Knickerbocker Hotel Pharmacy and Benjamin F. Savaglio, as owner and managing pharmacist thereof shall immediately forward to the Pharmacy Examining Board all indicia of licensure heretofore issued to Knickerbocker Hotel Pharmacy to operate as a pharmacy in the State of Wisconsin.
3. Effective immediately, the license to practice pharmacy issued to Benjamin F. Savaglio, date of birth December 15, 1930, of 3228 South Logan Avenue, Milwaukee, Wisconsin, license #7287, shall be and hereby is revoked. Benjamin F. Savaglio shall immediately forward to the Pharmacy Examining Board all indicia of licensure heretofore issued to him to practice pharmacy in the State of Wisconsin.
4. Respondent Savaglio is further ordered to pay the assessable costs of this proceeding, pursuant to s. 440.22(3), Stats.

#### OPINION

The Findings of Fact, Conclusions of Law, and first 3 paragraphs of the Order were stipulated, with one exception, between the Division of Enforcement and the Respondents. The exception is in the first paragraph of the Findings of Fact; the Stipulated Findings of Fact state that Respondent Savaglio's date of birth is December 15, 1990, and as that is both clearly incorrect and immaterial to the resolution of the matter, I have deleted it from the Findings of Fact I recommend to the Board. The stipulation between the Complainant and Respondents contains a provision that if the Pharmacy Examining Board does not accept the Stipulation in whole, the Stipulation shall not be binding on either Complainant or Respondent. The Stipulation further provides that the decision on whether to impose costs, either alone or together with forfeitures, is left to the Administrative Law Judge and the Board.

I recommend the Stipulation be approved by the Board.

It is clearly appropriate that costs be assessed against Respondent Savaglio in this matter, and that the licenses issued to both Respondents be

revoked for egregious violations of the pharmacist's duty to protect the public health, safety, and welfare.

Complainant Division of Enforcement argued for imposition of a substantial forfeiture on the grounds that Respondent Savaglio enjoyed great financial profit from his repeated violations of the law in selling codeine based cough syrups in circumstances which created the reasonable inference that Savaglio knew he was supplying drug addicts, and that the forfeiture is necessary for its deterrent effect. It is my opinion that there is little if any additional deterrent effect to be gained from a forfeiture once the license is revoked and the licensee subjected to criminal penalties, including substantial fines and costs, on the same facts. A pharmacist considering violating the law on a continual basis who is not deterred by the likelihood of criminal penalties, including tens of thousands of dollars in fines, and who is not deterred by the likelihood of license revocation, is not likely to be deterred by the possibility of a forfeiture imposed by the Board.

Dated this 18th day of April, 1991.

James E. Polewski

James E. Polewski  
Administrative Law Judge

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

KNICKERBOCKER HOTEL PHARMACY  
BENJAMIN F. SAVAGLIO, R.Ph.,  
RESPONDENTS.

AFFIDAVIT OF COSTS  
OFFICE OF BOARD LEGAL SERVICES  
LS 9004271 PHM

THE STATE OF WISCONSIN  
THE COUNTY OF DANE, ss.:

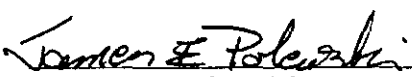
James E. Polewski, being first duly sworn on oath, deposes and says:

1. He is an attorney employed by the Office of Board Legal Services, Department of Regulation and Licensing, and in the course of that employment he was assigned to be Administrative Law Judge in the above captioned matter.

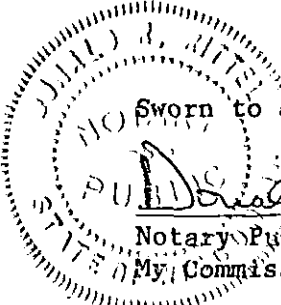
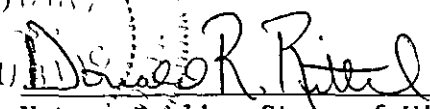
2. The following itemization is a true statement of costs of the Office of Board Legal Services incurred during the course of the above captioned proceeding:

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
5/22/90	Draft prehearing notice	30 m
5/29/90	Draft amended prehearing notice	10 m
6/12/90	Hold prehearing conference	30 m
	Draft memorandum, scheduling order	1 hr. 15 m
7/2/90	Letter to Kohn, Ganch re. Calarco	15 m
9/18/90	Draft notice of motion hearing	15 m
10/2/90	Motion hearing, draft order	2 hr.
10/5/90	Draft notice of prehearing	20 m
10/18/90	Letter to Kohn, Ganch	20 m
12/20/90	Telephone calls, Kohn, Ganch	20 m
1/8/91	Letter, scheduling order	1 hr.
4/18/91	Draft proposed decision	4 hr.
	TOTAL	10 hr 55 m

10.92 hours @ \$24.75, ALJ salary and benefits: \$270.27

  
James E. Polewski

Sworn to and subscribed before me this 19th day of April, 1991.

  
  
Notary Public, State of Wisconsin  
My Commission is Permanent.